

**KENTUCKY PERSONNEL BOARD
MINUTES OF FEBRUARY 10, 2020**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Vice Chair Griffith on February 10, 2020, at approximately 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky. Stafford Easterling, General Counsel, administered the oath of office to newly appointed member, Judge Tommy Chandler. Judge Chandler was welcomed to the Board.

Board Personnel Present:

Beverly Griffith, Vice Chair
Judge Tommy Chandler, Member
Catherine J. Monteiro, Member
Richard Waite, Member
Tanya Lawrence, Member
Mark A. Sipek, Executive Director and Secretary
Stafford Easterling, General Counsel
Cynthia Perkins, Administrative Section Supervisor
Gwen McDonald, Administrative Specialist

Not Present:

Mark O. Haines, Chair

2. **READING OF THE MINUTES OF THE REGULAR MEETING HELD JANUARY 10, 2020.**

The minutes of the last Board meeting had been previously circulated among the members. Vice Chair Griffith asked for any additions or corrections. Ms. Monteiro moved to approve the minutes as submitted. Mr. Waite seconded and the motion carried 4-0. The Board members signed the minutes.

(Vice Chair Griffith did not vote, unless noted.)

3. **EXECUTIVE DIRECTOR AND SECRETARY'S REPORT**

Mr. Sipek welcomed Judge Chandler back to the Board. Judge Chandler previously served as a Personnel Board member.

Mr. Sipek reported that the annual report is not ready due to grievance reporting. In the past year, there has been some turnover in the agencies, which has created difficulties in

obtaining the grievance numbers from those agencies. The report is expected to be ready in March.

On February 7, 2020, the Kentucky Association of Administrative Adjudicators (KAAA) hosted a three-hour program for its members. Mr. Sipek spoke during the program about KRS Chapter 13B issues. Another topic at the program addressed unconscious bias. Mr. Sipek felt this was a good meeting; about 50 members were in attendance, with many attendees having participated in current or past Board matters.

As a related note, Mr. Sipek stated that the Attorney General's office will be conducting KRS Chapter 13B training in March. More information will be shared if Board members are interested in attending

Mr. Sipek updated the Board regarding the Stephen Knipper matter, which was no longer a current agenda item. A pre-hearing conference had been conducted. The parties are addressing additional issues and making additional arguments. The Interim Order that was previously before the Board is no longer an issue, but the matter may appear back on the agenda in the future.

Mr. Sipek stated that the Southworth appeal was also progressing and may appear on the agenda in coming months.

Finally, Mr. Sipek reported that he and Mr. Easterling had met with members from the Personnel Cabinet during February and discussed changes to the Personnel Board election statutes that would allow for electronic voting. They also discussed clarifying/updating the statutes that would limit state employee-elected Board members' terms if the member retires or otherwise leaves state employment.

4. REPORT OF THE PERSONNEL CABINET

The Hon. Rosemary Holbrook was present on behalf of the Personnel Cabinet. She welcomed Judge Chandler on behalf of the Cabinet. Ms. Holbrook introduced the Cabinet's new General Counsel, the Hon. Gordon Rowe, to the Board. Mr. Rowe greeted the Board.

Ms. Holbrook stated the incentive regulation was to be heard by the regulation review sub-committee of the legislature that day. This regulation involves amounts paid for adoption assistance and also enhancements to the employee suggestion program.

Lastly, Ms. Holbrook introduced John Archer, Program Director for Kentucky Deferred Compensation. Mr. Archer gave a broad overview of the Deferred Compensation Program and its planned growth for the upcoming year. Mr. Archer answered questions from the Board.

5. **ORAL ARGUMENTS**

James L. Howitz v. Transportation Cabinet (2019-100) (Appellant's request)

Present for oral arguments were the Hon. Paul Fauri, counsel for Appellant, and the Hon. William Fogle, counsel for the Appellee, Transportation Cabinet. The parties answered questions from the Board.

6. **CLOSED SESSION/RETURN TO OPEN SESSION**

Mr. Waite moved that the Board go into Executive Session for the purposes of discussions and deliberations regarding individual adjudications. Ms. Lawrence seconded. Vice Chair Griffith stated that a motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. [Pursuant to KRS 61.810(1)(j), the Kentucky Open Meetings Act, the Board retired into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action were as follows, because there were deliberations regarding individual adjudications as listed on the Board's Agenda for the February 10, 2020 meeting.] (10:10 a.m.)

Mr. Waite moved to return to open session. Ms. Lawrence seconded and the motion passed by acclamation. (10:50 a.m.)

7. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments, where applicable.

A. **James L. Howitz v. Transportation Cabinet (2019-100)**

Ms. Lawrence, having considered the record, including Appellee's exceptions and request for oral argument, Appellant's response, and oral arguments, moved to defer this matter to the next meeting of the Board. Mr. Waite seconded and the motion carried 4-0.

B. **Ghada El-Dabbagh v. Office of the State Budget Director (2017-199 & 2018-016) (2 appeals)**

Judge Chandler, having considered the record, including Appellant's exceptions and Appellee's response, moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 4-0.

C. **Cedric Hale v. Transportation Cabinet (2019-031)**

Ms. Lawrence, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Monteiro seconded and the motion carried 4-0.

D. **Kevin Hudson v. Department of Education (2018-260)**

Mr. Waite, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Monteiro seconded and the motion carried 4-0.

E. **Steven Owens, v. Justice and Public Safety Cabinet/Juvenile Justice (2019-094)**

Ms. Lawrence, having considered the record, moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 4-0.

F. **Steven Whiteley v. Justice and Public Safety Cabinet/Corrections (2019-174)**

Ms. Lawrence, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Monteiro seconded and the motion carried 4-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

- G. Amanda Harper v. Justice and Public Safety Cabinet/Corrections (2019-187)
- H. Todd Bogle v. Cabinet for Health and Family Services (2018-148))

Ms. Monteiro moved to accept the recommended orders and to dismiss the appeals for failure to prosecute the appeals. Ms. Lawrence seconded and the motion carried 4-0.

9. WITHDRAWALS

Mr. Waite moved to accept the following withdrawals *en bloc* and to dismiss the appeals. Judge Chandler seconded and the motion carried 4-0. Ms. Lawrence abstained from Items “A” and “F.”

- A. Morgan Dunn v. Cabinet for Health and Family Services & Personnel Cabinet (2020-018)
- B. Christopher Mason v. Cabinet for Health and Family Services (2019-315)
- C. R.B. Mercer v. Auditor of Public Accounts (2019-209)
- D. Rodney Middleton, v. Transportation Cabinet (2019-248)
- E. Jason Keith Ward v. Transportation Cabinet (2020-008)
- F. Shannon Wilkerson v. Department of Education & Personnel Cabinet (2019-226)
- G. Gary Wilson v. Justice and Public Safety Cabinet/Corrections (2019-223)

10. SETTLEMENTS

Ms. Monteiro moved to issue a settlement order and to sustain the appeal to the extent set forth in the settlement as submitted by the parties. Mr. Waite seconded and the motion carried 4-0.

- A. April M. Bentley v. Cabinet for Health and Family Services (2019-172) (Mediation)
- B. Tina DeJesus v. Cabinet for Health and Family Services (2018-176) (Mediation)
- C. Ray Harris v. Department of Veterans Affairs (2019-161)
- D. Steven J. Hill v. Justice and Public Safety Cabinet/Corrections (2019-213)
- E. Katie Peyton v. Cabinet for Health and Family Services (2019-062)
- F. Tiffany Triplett v. Justice and Public Safety Cabinet/Corrections (2019-149)

11. OTHER

A. Review Personnel Board Regulations:

1. 101 KAR 1:335, Employee actions
2. 101 KAR 1:345, Disciplinary actions
3. 101 KAR 1:365, Appeal and hearing procedures
4. 101 KAR 1:367, Standards of conduct and technology governing electronic media and still photography coverage of board proceedings
5. 101 KAR 1:375, Employee grievances and complaints
6. 101 KAR 1:395, Restoration from military duty
7. 101 KAR 1:400, Promotion

Mr. Sipek stated that the Board had a deadline in February to notify the Legislature if any of our regulations were going to be revised. Mr. Sipek generally discussed the anticipated changes to the above Personnel Board regulations with the Board, stating that he felt that the standards stated in 101 KAR 1:367 should be allowed to lapse (not amended). Other proposed changes would include allowances for filing documents by email and changing the exception period to allow responses to exceptions to be filed within 15 days. A proposed draft of the amended regulations will be presented to the Board within 18 months.

Mr. Waite moved that staff will send a letter to the Legislative Research Commission stating that we wished to amend all our regulations. Ms. Monteiro seconded and the motion carried 4-0.

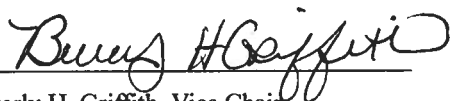
B. Renewal of Hearing Officers' Contracts:

Brenda Dinkins Allen
Colleen B. Beach
Geoffrey B. Greenawalt
Stephen T. McMurtry
Roland P. Merkel
E. Patrick Moores
Kim Hunt Price
John C. Ryan
R. Hanson Williams

Mr. Sipek stated that the Hearing Officers' contracts have a provision that allows the contracts to be renewed for an additional two-year term. Nine of the ten current Hearing Officers were interested in renewing their contracts. The Hon. Darren Embry is moving his practice and was not interested in the renewal of his contract.

seconded and the motion carried 4-0.

There being no further business, Judge Chandler moved to adjourn the meeting. Ms. Monteiro seconded and the motion passed by acclamation. (11:04 a.m.)


Beverly H. Griffith, Vice Chair

Catherine J. Monteiro, Member

Richard Waite, Member


Tanya Lawrence, Member

Judge Tommy Chandler, Member

Mrs. Montano moved to renew the above-cited hearing Officer's contracts for the period of July 1, 2020, through June 30, 2022, and she further moved that the Executive Director, Mr. Spick, be allowed to take action to execute the necessary documents that would allow renewal of these contracts, subject to the approval of the Governor's General Council. Mrs. Lawrence seconded and the motion carried 4-0.

There being no further business, Judge Chandler moved to adjourn the meeting. Mrs. Montano seconded and the motion passed by acclamation. (11:04 a.m.)

Beverly H. Griffin, Vice Chair


Catherine J. Montano, Member

Richard Spick, Member

Tanya Lawrence, Member

Judge Timothy Chandler, Member

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Judge Tommy Chandler, Member

Catherine J. Monteiro, Member



Tanya Lawrence, Member

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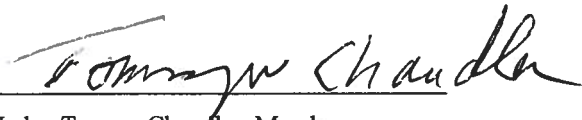
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Beverly H. Griffith, Vice Chair

Catherine J. Monteiro, Member

Richard Waite, Member

Tanya Lawrence, Member



Judge Tommy Chandler, Member

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